

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal(AT)(Insolvency) No. 1041 of 2020**

**IN THE MATTER OF:**

**M.P. Industrial Development Corporation  
AVN Towers  
192 Zone -1, M.P.Nagar  
Bhopal – 462 011  
Through its General Manager**

**...Appellant**

**Vs.**

- 1. Mr. Jagdish Parulkar  
Resolution Professional  
for Madhya Pradesh Phosphate Pvt. Ltd.  
B-56, Wallfort City,  
Bhatagaon, Ring Road No.1,  
Raipur, Chattisgarh – 462 001**

**...Respondent No.1**
- 2. Madhya Bharat Phosphates Pvt. Ltd.,  
Revived Company  
E-7/80, Arera Colony, Bhopal,  
Madhya Pradesh – 462 016**

**...Respondent No.2**
- 3. Shree Pushkar Chemicals & Fertilizers (SPCFL)  
Resolution Applicant  
301-302, 3<sup>rd</sup> floor, Atlanta Centre,  
Near Udyog Bhavan, Sonawal Road,  
Goregaon**

**...Respondent No.3**

**Present:**

**For Appellant : Mr. Abhinav Srivastava and Mr. Nirmal Prasad, Advocates.**

**For Respondents: Ms. Mrinalini Prasad, Advocate for Respondent No. 1**

**Mr. Jasdeep Singh Dhillon, Advocate for Respondent**

**Nos. 2 & 3.**

## J U D G M E N T

### **DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER**

1. The present appeal has been filed by Appellant – ‘M.P.Industrial Development Corporation’ under Section 61 of the ‘Insolvency and Bankruptcy Code, 2016’ (in short ‘Code’) against the order dated 05.03.2020 passed by the ‘Adjudicating Authority’ (National Company Law Tribunal), Indore Bench, Ahmedabad in I.A No. 181/NCLT/AHM/2019 in CP(IB) No.131/9/ NCLT/AHM/2018.
2. The Appellant has raised that their lease rent and maintenance bill for the year 2019-2020 amounting to Rs. 5,41,142/- with interest has not been cleared by the Corporate Debtor / Resolution Professional (RP) and similarly water bill dated 07.02.2020 amounting to Rs.11,52,646/- has not been paid by the Corporate Debtor/ RP.
3. The ‘Adjudicating Authority’ has approved the ‘Resolution Plan’ vide its order dated 05.03.2020 duly approved by ‘Committee of Creditors’ (CoC) with 100% voting. The RP has submitted the compliance report before the ‘Adjudicating Authority’ which is appearing on para 14 of the impugned order. The Adjudicating Authority’ based on compliance certificated as stated above has approved the plan. In order to bring brevity and clarity on the issue para 6.2, 6.4, 6.7 & 8 of the impugned order are extracted below:

*“ 6.2- Corporate Insolvency Resolution Process Cost (CIRP Cost)  
The CIRP cost has been assumed by SPCFL at an amount of  
Rs.25 lacs comprising of the fees of the IRP/RP as approved by  
the CoC, fees of the valuers who have carried out the valuation*

and such other fees and expenses as approved by the CoC in accordance with the IBC as eligible fees and expenses under this head. **In case the actual CIRP cost is higher than the estimated CIRP cost, SPCFL will pay the higher amount.** However, in case if the actual CIRP cost is lower, then the differential will be adjusted by increasing the payments to the financial creditors as envisaged.

6.4- Operational Creditors (Including Statutory dues/dues to government)

Although the liquidation value arrived at by the valuers appointed by the RP has not been disclosed to SPCFL at the time of submission of the Resolution Plan, on the basis of the realistic values which can be realised in the event of liquidation of various assets, in view of SPCFL the liquidation value would be lower than the claims lodged by the Financial Creditors and hence in the event of liquidation of amounts payable to the Operational Creditors would be NIL.

Further, as per the details of the Operational Creditors' claims as given in the IM, it is understood that the claims of certain Operational Creditors are disputed and therefore not accepted by the RP, SPCFL has therefore made a provision of Rs. 50 lacs as payable to the Operational Creditors. This would also cover the payments against any statutory liabilities/government/semi government dues that may arise. It is further proposed that out of this amount of Rs. 50 lacs an amount of Rs. 10 lacs is proposed to be earmarked for the settlement of the dues in respect of direct and indirect taxes (i.e. liability pertaining to any year prior to the year in which resolution plan is approved) and the balance amount will be paid to other operational creditors including the creditors covered at Para-C of Annexure –B of the Resolution Plan,

The payment of claims to the operational creditors will be made in a pro rata manner to all the operational creditors prior to

*making any payments to financial creditors. In respect of the statutory claims relating to Direct/Indirect taxes, the earmarked sum of Rs.10 lacs will be transferred to an escrow account with the RP, to be distributed upon settlement with the said authorities.*

*6.7- SPCFL is a debt free cash rich company, as of 31.03.2018 SPCFL is consolidated net worth stood at Rs. 237.10 Crores. Further, as on 31.12.2018 (as per limited audit review report) SPCFL's consolidated net worth stood at Rs. 275.67 crores. There is no outstanding term loan payable by SPCFL. Although it is enjoying fund based working capital facilities of Rs.81.32 crores, its actual utilisation is practically nil and thus major portion of the CC is available for utilisation. SPCFL is also having sizeable investment in liquid Fixed Deposits and other liquid instruments. SPCFL has also given copies of fixed deposits kept with banks aggregating to Rs.28 Crores to the CoC in evidence of having enough liquidity readily available to make the payments as envisaged I the Financial Plan. SPCFL has thus adequate in the plan to various creditors/stakeholders including payments required to be, made if any, of liquidation value to operational creditors/dissenting financial creditors, as per the plan.*

*8- Resolution Plan – Priority of payments and payment summary.*

*The following table indicates the priority of payments as per the Resolution Plan which is in accordance with the order of priority as mentioned in the IM/IBC.*

<i>Priority No.</i>	<i>Head</i>	<i>Amount (Rs. In Crores)</i>
<i>1.</i>	<i>CIRP Cost (refer para 6.2)</i>	<i>0.25</i>

2.	<i>Government dues / statutory liabilities (including direct and indirect taxes and other operational creditors and Settlement of ex-workmen claims (refer Paras 6.3 and 6.4)</i>	0.62
3.	<i>Payments to secured Financial Creditors (refer para 6.5)</i>	18.15
	<i>Total</i>	19.02

4. A chronology of event is stated below for clarity:

a.	09.09.2018	<i>On 09.09.2018 insolvency petition was admitted against R-2/Corporate Debtor</i>
b.	14.09.2018	<i>Public announcement issued all &amp; creditors of CD were required</i>

		<i>to file claims by 28.09.2018</i>
c.	<i>16.02.2019/23.02.2019</i>	<i>R-3 filed its resolution plan dated 16.02.2019 in response to the EOI which came to be published by R-1 on 05.01.2019</i>
d.	<i>06.03.2019</i>	<i>Revised resolution plan submitted by R-1 was approved by the CoC by 100% voting</i>
e.	<i>05.03.2020</i>	<i>Resolution Plan approved by NCLT, vide order dated 05.03.2020 passed in IA No. 181 of 2019</i>

5. In terms of 'Lease Agreement' dated 18.07.2007 entered into between the Appellant and the Corporate Debtor vide Clause 2, 3, 4, 5 and the corporate debtor was obligated to pay the lease rent, annual maintenance charges towards covering street light charges etc., and taxes, rates and other charges including water charges on the area in possession of the corporate debtor. The Appellant has stated that lease rent and maintenance bill alongwith due interest plus CGST and SGST thereon amounting to Rs.5,41,142/- was submitted to the Corporate Debtor and similarly the water bill amounting to Rs.11,52,646/- was submitted to the Corporate Debtor (*page 68 & 69 of the Appeal paper*)

book). The Appellant has stated that despite regular reminders to the corporate debtor failed to clear the dues and the dues relates to the period after 09.09.2018 when CIRP has commenced and hence as per Rule 31 & 32 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides for the Insolvency Resolution Process and essential services which forms the part of Insolvency Resolution Process cost vide Chapter –IX of the IBBI (Insolvency Resolution Process for Corporate Persons ) Regulation, 2016 r/w Section 5(13) (e) & Section 14 (2) of the Code. The extract of the same is reproduced below for a clarity and immediate reference:

*Section 5 (13) - "insolvency resolution process costs" means—*

*(a) the amount of any interim finance and the costs incurred in raising such finance;*

*(b) the fees payable to any person acting as a resolution professional;*

*(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;*

*(d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and*

*(e) any other costs as may be specified by the Board;*

*Section 14 (2)- The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

The Appellant has also submitted that the Resolution Plan envisaged a provisions of Rs.50 lac as payable to operational creditor to cover payments against statutory liability / government due, apart from that the Clause 6.2, the Resolution Applicant/SPCFL has already stated that in case the actual CIRP cost is higher than the estimated CIRP costs the Resolution Applicant/SPCFL will pay the higher payment.

6. The Respondent No.1/RP that he was appointed as 'Resolution Professional' vide order dated 20.12.2018 of the Adjudicating Authority. The RP has stated that the Liquidation value of the corporate debtor was Rs.11.61 Crore and financial bid offered by Respondent No.3/ Resolution Applicant is Rs.19.02 Crore and hence CoC has approved the Resolution Plan. The Resolution Professional has considered the Appellant claim as statutory dues and not a part of the CIRP costs and he has also stated that once the Resolution Plan is approved by a majority of CoC voting share ,no claim can be entertained by the RP. However, RP himself is stating in para 10 of the reply (page no. 008) that "it is pertinent to mention that the amount raised by the appellant has been considered in the resolution plan and the Resolution Applicant in clause 6.4 and Clause 11.2.8 of the Resolution Plan has made a provision for payment of the same."

The Adjudicating Authority on 22.11.2019 has also asked to the RP to confirm that the Resolution plan complied with the latest judgment in the Committee of Creditors Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.



7. The Respondent No.3 / Resolution Applicant has stated below vide para 4 of their reply and has also stated that the appeal suffered from delay, latches and acquiescence:

*“Para 4 – I stated and submit that the Committee of Creditors (CoC) on 06.03.2019 conducted in 10<sup>th</sup> meeting and had approved the final revised resolution plan of Respondent No.3 for the revival of Respondent No.2 i.e. Madhya Bharat Phosphates Pvt. Ltd. in accordance with the provisions of the Code and the Corporate Insolvency Resolution Process (CIRP) Regulations made thereunder. The resolution plan came to be approved by 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.”*

The Respondent No.3 has submitted that although the liquidation value arrived by at the valuers appointed by the RP has not been disclosed to SPCFL at the time of submission of the Resolution Plan, on the basis of the realistic values ,which can be realised in the event of liquidation of various assets, in view of SPCFL, the liquidation value would be lower than the claims lodged by the Financial Creditors and hence in the event of liquidation the amount payable to the Operational creditors would be NIL. The Respondent No.3 has also submitted that as per the details of the Operational Creditors claims as given in the IM, it is understood that the claims of certain Operational Creditors are disputed and therefore not accepted by the RP. SPCFL has therefore made a provision of Rs. 50 lacs as payable to the Operational Creditors.

This would also cover the payment against any statutory liabilities/governments/semi-government dues that may arise. It is further proposed that out of this amount of Rs. 50 lacs an amount of Rs. 10 lacs is proposed to be earmarked for the settlement of the dues in respect of direct and indirect taxes (i.e. liability pertaining to any year prior to the year in which resolution plan is approved) and the balance amount will be paid to other operational creditors including the creditors covered at Para-C of Annexure –B of the Resolution Plan, The payment of claims to the operational creditors will be made in a pro rata manner to all the operational creditors prior to making any payments to financial creditors. In respect of the statutory claims relating to Direct/Indirect taxes, the earmarked sum of Rs.10 lacs will be transferred to an escrow account with the RP, to be distributed upon settlement with the said authorities. The Resolution Applicant has also cited a few judgments to supplement its case that no dues is payable once Resolution Plan is approved.

8. We have carefully gone through the submissions made by the parties. In this case, there is apparent mistake that the lease rent and the electricity and water bill all are essential supply and should form part of Insolvency Resolution Process cost vide Chapter –IX IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016, Regulation 31& 32 and R/w Section 5(13) (e) and 14(2) of the Code. The Adjudicating Authority has approved the ‘Resolution Plan’ which is at **Annexure-E page - 70 of the Appeal paper book vide Clause 6.2 has clearly stated that in case the actual CIRP is higher than the**

**estimated CIRP cost the Resolution Applicant will pay the higher amount (appearing at page 91 of the appeal paper book).**

9. Hence, the Resolution Applicant is liable to pay the principal amount due for the specified period of the bill i.e for the CIRP Period, without considering the interest components as part of Insolvency Resolution Process Cost which he is liable to pay in terms of above stated clause (para 3 & 8 above) of Resolution Plan. It is settled law that the Insolvency and Bankruptcy Code, 2016 is a complete Code. Hence, all concerned are required to comply with the express provisions of the Code without any deviation.

10. Hence, the appeal is partially allowed with above modification.

Pending IAs, if any stands disposed of. Interim Orders, if any, passed by this Appellate Tribunal stands vacated. No orders as to costs.

**[Justice Jarat Kumar Jain]  
Member (Judicial)**

**(Dr. Ashok Kumar Mishra)  
Member(Technical)**

**29<sup>th</sup> July, 2021**

**New Delhi**

*Raushan.k*